



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2020-0324, FRL-8832-02-R2]

#### Approval and Promulgation of Implementation Plans; New York; Ozone Season NO<sub>x</sub> Controls for Simple Cycle and Regenerative Combustion Turbines

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) as a SIP-strengthening measure that is expected to further control emissions of oxides of nitrogen (NO<sub>x</sub>) to contribute to attainment and maintenance of ozone standards. This SIP strengthening measure goes beyond what has already been approved as satisfying the RACT requirements for the 2008 ozone NAAQS. The EPA is approving a SIP revision of a New York regulation that lowers allowable NO<sub>x</sub> emissions from simple cycle and regenerative combustion turbines during the ozone season. The intended effect of this action is to approve control strategies that will reduce emissions and help New York State attain and maintain the national ambient air quality standards for ozone.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number **EPA-R02-OAR-2020-0324**. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Fausto Taveras, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

**SUPPLEMENTARY INFORMATION:**

The SUPPLEMENTARY INFORMATION section is arranged as follows:

**Table of Contents:**

- I. What is the background for this action?
- II. What comments were received in response to the EPA’s proposed action?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. What is the background for this action?**

On February 26, 2021, the EPA published a Notice of Proposed Rulemaking that proposed to approve a revision to the New York SIP submitted by the State of New York on May 18, 2020. *See* 86 FR 11688. The SIP revision includes a newly-adopted regulation, Title 6 of the New York Code of Rules and Regulations (NYCRR), Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO<sub>x</sub>) Emission Limits for Simple Cycle and Regenerative Combustion Turbines” (Subpart 227-3), meant to reduce NO<sub>x</sub> emissions from simple cycle and regenerative combustion turbines during the ozone season. New York’s May 2020 SIP submittal applies to major sources of NO<sub>x</sub> as a SIP-strengthening measure for New York’s ozone SIP.

The EPA is also approving the removal of New York’s previous 6 NYCRR Subpart 227-3, “Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program” (New York’s 227-3 Trading Program Regulation) from New York’s SIP.<sup>1</sup> New York’s 227-3 Trading Program

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<sup>1</sup> In the February 26, 2021 Notice of Proposed Rulemaking (NPRM), the EPA mistakenly wrote that it was “also proposing to approve into the SIP the new version of 6 NYCRR Subpart 227-3, “Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program” (New York’s 227-3 Trading Program Regulation).” (Emphases added). The EPA, as stated above, intended to propose to remove this previous version of Subpart 227-3 from New York’s

Regulation contained a NOx emissions budget and allowance trading system that is no longer in effect and that New York repealed from the New York Code of Rules and Regulations on September 5, 2014.

The specific details of New York's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's February 26, 2021 proposed rulemaking. *See* 86 FR 11688.

## **II. What comments were received in response to the EPA's proposed action?**

In response to EPA's February 26, 2021 proposed rulemaking on New York's SIP revision, the EPA received four comments during the 30-day public comment period. The specific comments may be viewed under Docket ID Number EPA-R02-OAR-2020-0324 on the <http://www.regulations.gov> website.

*Comment 1:* A Washington State citizen commenter supports the EPA's proposed approval of New York's SIP revision since "... high levels of nitrogen oxides are extremely detrimental... and [the commenter believes] that it would be in the best interest of public health to lower the allowable levels of the nitrogen oxides allowed in NYC."

*Response 1:* The EPA acknowledges the commenter's support of the EPA's proposed rule.

*Comment 2:* An anonymous citizen provided extensive comments regarding the establishment of the Clean Air Act and the impact of NOx emissions to the environment. The commenter voices support of the EPA's proposed approval since "... these turbines would be beneficial when it comes to lowering nitrous oxide emissions during the warmer periods, and ozone seasons."

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SIP. The EPA's intention to remove this version from New York's SIP was made clear by, for example, the section of the NPRM entitled "Removal of New York's Nitrogen Oxides Emissions Budget and Allowance Program (Ozone Control Periods 1999-2002)" (86 FR at 11690-11691). The EPA received no comments on this issue. Because the agency's intention was made clear, it has determined the language in the NPRM provided adequate notice of EPA's intended proposal with respect to this provision. Thus, the EPA is finalizing the removal of New York's 227-3 Trading Program Regulation from New York's SIP.

*Response 2:* The EPA acknowledges the commenter's support of the EPA's proposed rule.

*Comment 3:* A New York State citizen provides extensive comments, in which the commenter asks if the COVID-19 pandemic has impacted studies concerning NO<sub>x</sub>. The commenter provides a range of data about COVID-19 and its impacts globally and across the country.

*Response 3:* The EPA has determined that this comment is outside the scope of our proposed action. This comment does not make specific claims about how EPA should modify its proposed action, and therefore the EPA will not provide a specific response to this comment.

*Comment 4:* The Midwest Ozone Group (MOG) submitted comprehensive comments that urge the EPA to require New York to impose all emission controls for Simple Cycle Combustion Turbines (SCCTs) units by 2023, instead of the adopted 2025 final phase year. MOG stated that a 2023 implementation will "be consistent with the nonattainment obligations of the [New York Metropolitan Nonattainment Area, or] NYMA." MOG also provided details on how NO<sub>x</sub> emissions from New York's SCCTs adversely impact upwind states like Connecticut and argued that EPA's proposed approval fails to recognize the impact on those upwind states and the Good Neighbor Provisions of the Clean Air Act. In addition, MOG provided the following comments, and extensive details for each, as follows:

1. In 2023, the only remaining ozone monitor modeled to show nonattainment in the Northeast is located in the Connecticut portion of the NYMA.

2. It has been well-established that residual nonattainment in Connecticut and the NYMA is being caused by SCCT units in New York.

3. EPA should not allow, therefore, New York to delay the implementation of those controls beyond the Moderate nonattainment date for the 2015 ozone NAAQS.

MOG's comment letter also included: (1) presentation slides distributed by the EPA on the analysis of ozone trends in the east in relation to interstate transport, (2) MOG's December

14, 2020 comment letter to the EPA regarding the proposal of the Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, and (3) a data analysis presentation conducted by the Stationary and Area Sources Committee on high emitting Electric Generating Units during High Electric Demand Days throughout states within the Ozone Transport Region. MOG referred to these attachments throughout its comment on EPA's proposed action.

*Response 4:* The EPA reviewed NYSDEC's SIP revision to examine if similar comments were presented during the department's assessment of public comments for the proposal of Subpart 227-3. Representatives from the EPA, state agencies, environmental organizations, and sustainable energy organizations each submitted comments that requested NYSDEC to have the proposed 2025 NO<sub>x</sub> limits on SCCTs take effect sooner. In the EPA's case, this is because the EPA wanted the SIP-strengthening provision to begin as expeditiously as possible to enhance New York's ozone SIP. NYSDEC responded to the comments by stating that it has consulted with stakeholders—including environmental justice organizations, environmental groups, impacted source owners, the NYISO, the Department of Public Service, and the New York State Energy Research and Development Authority—during the development of the regulation. NYSDEC stated that it chose the 2025 timeframe to take into account considerations of improving air quality and maintaining electric system reliability. NYSDEC has also factored in the time demands for permitting and implementing other requirements, such as stack testing, and believes that the compliance schedule in the regulation is appropriate. After review, the EPA concurs with NYSDEC's assessment because the compliance schedule will provide adequate timing for owners or operators of impacted SCCTs to retrofit control technology, determine compliance options, and replace or retire older units in order to comply with the more stringent emission limits. The EPA also agrees with NYSDEC that the chosen timeframe provides owners and operators of SCCTs designated as a reliability source, which represents a significant amount of the impacted SCCTs, an appropriate timeframe to comply with the control requirements of Subpart 227-3.

Further, the EPA finds the 2025 timeframe is appropriate because it builds upon existing protections in other New York regulations applicable to SCCTs. For example, on July 12, 2013, the EPA published a final approval that revised New York's SIP for ozone concerning the control of NO<sub>x</sub>. *See* 78 FR 41846. The SIP revision consisted of amendments to Title 6 of the NYCRR, Subpart 227-2, "Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO<sub>x</sub>).” The purpose of that SIP revision was to impose more stringent emission limits on major stationary sources of NO<sub>x</sub> that contribute to regional and local nonattainment of the 1997 and 2008 ozone standards. Included within this EPA-approved regulation are emission limits and system averaging for SCCTs that apply year-round. Units applicable to Subpart 227-3 already comply with federally approved presumptive RACT emission limits. And SCCTs that are subject to Subpart 227-3 must also comply with the provisions set in Subpart 227-2 outside the ozone season.<sup>2</sup> When the EPA published the final approval of New York's Subpart 227-2, the EPA agreed that the emission limits detailed for SCCTs were deemed as RACT NO<sub>x</sub> limits. *See* 78 FR 41846, (July 12, 2013). The purpose of Subpart 227-3 is to incorporate additional emission requirements (beyond RACT NO<sub>x</sub> limits) for SCCTs during the ozone season only. The phased-in approach outlined within Subpart 227-3 does not create undue delay in emission reductions because applicable SCCTs comply with the EPA-approved NO<sub>x</sub> RACT limits detailed in Subpart 227-2 year-round. The emission limits and compliance schedule outlined in Subpart 227-3 will result in further NO<sub>x</sub> reductions throughout the NYMA as expeditiously as practicable. The EPA believes, therefore, that the additional emission requirements listed within Subpart 227-3 will strengthen New York's ozone SIP and help the state attain the 2008 and 2015 national ambient air quality standards for ozone.

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<sup>2</sup> Under 6 NYCRR Subpart 227-2, applicable owners or operators of gas-fired SCCTs must comply with a RACT NO<sub>x</sub> emission limit of 50 ppmvd outside the ozone season. While owners or operators of oil-fired SCCTs must comply with a RACT NO<sub>x</sub> limit of 100 ppmvd outside the ozone season. The NO<sub>x</sub> emission limits are on a part per million dry volume basis (ppmvd), corrected to 15% oxygen.

### **III. What action is the EPA taking?**

The EPA is approving New York's SIP revision submittal dated May 18, 2020, for purposes of incorporating 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NO<sub>x</sub>) Emission Limits for Simple Cycle and Regenerative Combustion Turbines," with a state effective date of January 16, 2020. After evaluating Subpart 227-3 for consistency with the CAA, EPA regulations, and EPA policy, the EPA finds that the submission strengthens New York's ozone SIP and, as an added benefit, will help New York State attain and maintain the national ambient air quality standards for ozone.

The EPA is also approving the removal of New York's previous 6 NYCRR Subpart 227-3, "Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program", from New York's SIP. In addition to finding that New York's 227-3 Trading Program Regulation is no longer in effect and that New York repealed it from the New York Code of Rules and Regulations, the EPA has determined, as discussed in the proposed rulemaking (*see* 86 FR 11688), that New York's 227-3 Trading Program Regulation has been superseded by other state and federal regulations that required additional NO<sub>x</sub> ozone season emission reductions. As the EPA determined regarding New York's CAIR trading program rule (*see* 86 FR 11688), the EPA does not believe that the removal of New York's 227-3 Trading Program Regulation from New York's SIP will interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the NAAQS. And as discussed in the proposed rulemaking, New York's 227-3 Trading Program Regulation predates more stringent rules and tighter NO<sub>x</sub> ozone season budgets under the NO<sub>x</sub> SIP call, CAIR, and CSAPR trading programs, as well as New York NO<sub>x</sub> RACT rules; it is not applicable to the current federal or state regulatory framework. New York also does not rely on emission reductions from New York's 227-3 Trading Program Regulation in any of its nonattainment planning elements required under CAA sections 110, 172, or 182 and the EPA no longer operates the NO<sub>x</sub> Budget Trading Program allowing for the allocation and trading of allowances.

Moreover, the removal of New York's 227-3 Trading Program Regulation from New York's SIP will have no consequences for the attainment and maintenance of the NAAQS in any area, now or in the future. Consistent with CAA section 110(l), the EPA has determined that the removal of New York's 227-3 Trading Program Regulation will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the NAAQS.

Accordingly, the EPA finds that it is appropriate to approve the removal of New York's 227-3 Trading Program Regulation from the New York SIP.

The EPA is approving New York's May 18, 2020 SIP submittal as it applies to major sources of NO<sub>x</sub>, as a SIP-strengthening measure for New York's ozone SIP.

#### **IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NO<sub>x</sub>) Emission Limits for Simple Cycle and Regenerative Combustion Turbines," the regulation described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 2 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in New York's SIP, have been incorporated by reference by EPA into that SIP, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>3</sup>

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<sup>3</sup> 62 FR 27968 (May 22, 1997).



## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735 (October 4, 1993)) and 13563 (76 FR 3821 (January 21, 2011));
- Is not an Executive Order 13771 (82 FR 9339 (February 2, 2017)) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999));
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629 (February 16, 1994)).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249 (November 9, 2000)).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: August 03, 2021.

Walter Mugdan,  
*Acting Regional Administrator,*  
*Region 2.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

### **Subpart HH – New York**

2. In §52.1670, the table in paragraph (c) is amended by revising the entry “Title 6, Part 227, Subpart 227-3” to read as follows:

#### **§52.1670 Identification of plan.**

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(c) \* \* \*

### **EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA Approval Date</b>	<b>Comments</b>
* * * * *				
Title 6, Part 227, Subpart 227-3	Ozone Season Oxides of Nitrogen (NO <sub>x</sub> ) Emission Limits for Simple Cycle and Regenerative Combustion Turbines	January 16, 2020	[insert date of publication and Federal Register page citation] EPA approval finalized at [insert Federal Register citation]	
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